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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael K. Powell, Chairman
The Honorable Kathleen Q. Abernathy, Commissioner
The Honorable Michael J. Copps, Commissioner
The Honorable Kevin J. Martin, Commissioner
The Honorable Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20544

Re: Local Television Ownership Rule
MB Docket No. 02-277

Dear Mr. Chairman and Commissioners:

Based on press reports of the FCC staff's recommendation concerning the local television ownership rule, Hearst-Argyle Television, Inc. again respectfully requests that you consider proposals such as its own and that of the National Association of Broadcasters that formulate a new local television station ownership rule based on audience share measurement rather than a voice count. It is Hearst-Argyle's understanding that the current staff recommendation modifies the number of independent television stations that must remain in a market in order for two (or perhaps more) stations to be commonly owned but retains the current rule's voice-count approach. Such a voice-count approach, however,

(1) ignores the fact that substantial percentages (from 40% to 60%) of television viewing are attributable to non-local television outlets such as cable and satellite channels;

(2) provides no relief in medium and smaller markets, where the need for regulatory relief is most profound, because the very structure of the approach requires that there remain a certain number (be it four or six or eight) of independent, local television stations and that number is already greater than the current number of stations in many markets; and

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(3) maintains the arbitrariness inherent in the current rule that the *Sinclair* court found disturbing by failing to recognize the substitutability, from the consumer's perspective, of other media outlets and by engaging in unsupportable line-drawing that appears to ignore the underlying regulatory problem of preserving competition and diversity since it relies on a one-size-fits-all voice count.

By contrast, either Hearst-Argyle's or the NAB's audience share measurement proposal avoids each of these three major shortcomings in the reported staff recommendation. Perhaps most importantly, audience shares are a reasonable, objective measure of diversity and competition. Nielsen share data capture who and how many are watching a specific television service. Thus, share data serve as a reasonable, aggregated proxy for outlet, source, and program diversity, and these forms of diversity, in turn, are the best means to achieve viewpoint diversity. In addition, share data also measure the relative success of television channels in competing for viewers.

Hearst-Argyle believes that its particular two-pronged proposal, the first prong a 30% hard cap on collective audience share and the second prong an HHI-analog based on audience shares—both prongs of which are derived directly from, and are supported by, antitrust case law and analysis—accomplishes all the policy objectives the Commission may have for a local television ownership rule. Rather than repeat the details and rationale of the proposal, which are fully set forth in Hearst-Argyle's Reply Comments in this proceeding, Hearst-Argyle, instead, respectfully directs your attention to two critical ways in which its proposal will provide regulatory relief in certain markets—while preserving competition and diversity—whereas the current staff recommendation will not.

First, Hearst-Argyle's proposal does not give talismanic significance to the relative market position of stations in a market. It should not matter, for purposes of local television ownership, whether a station is ranked in the top 4 or what particular rank in the top 4 a station may have. All stations, regardless of rank, are competing for viewers with cable and satellite channels. All stations, regardless of rank, face the same financial pressures as a result of the DTV transition and the growing costs of local news production. Indeed, if the Commission's desire is, specifically, to preserve local newscasts, then preventing the combination of stations that already have local newscasts does nothing to ameliorate the financial difficulty of actually producing such newscasts. Rather than provide a means to support local newscasts, the current rule and the reported staff recommendation make it more likely that some stations with newscasts will have to bow out of that expensive programming option. Neither competition nor diversity are fostered by such an approach.

This is not to say that Hearst-Argyle's proposal does not take market rank into account, for it does, but in a more appropriate and reliable manner. Under the second prong of Hearst-Argyle's proposal, the test is *both* the *resulting concentration* post-combination and the *change in concentration* as a result of the combination. The greater the audience share of a station to begin with, the more likely that a combination will fail the second prong because that market share will have a greater impact, mathematically, on the determination. Hearst-Argyle's

proposal, therefore, appropriately *weighs* market rank but does not prize it above all other considerations as the staff's recommendation appears to do.

Second, Hearst-Argyle's proposal potentially provides regulatory relief in all 210 markets. There is no arbitrary cut-off that prevents combinations in smaller markets where combinations may be appropriate and necessary. By using audience shares, instead of voice counting, Hearst-Argyle's proposal gives proper weight to the relative dominance of a local station vis-à-vis other local stations *and* cable and satellite channels *and* out-of-market broadcast stations, but it does not prevent a combination that would be in the public interest simply because the local market is relatively small and there happen to be only four television stations in the market before combination.

In conclusion, to provide a regulatory environment in which local television may not only survive, but grow and prosper and meet the ever-changing needs of serving the public interest in the twenty-first century, local television ownership should be not be restricted by arbitrary voice counting. Undoubtedly, there are situations where the public interest would be affirmatively promoted by permitting two top four stations to combine, even where the market may have six independent owners after the combination. Undoubtedly, there are situations where the public interest would be affirmatively promoted by permitting two stations to combine in a market with only three stations. The one-size-fits-all approach of the reported staff recommendation cannot accommodate these circumstances. The staff's recommendation is at odds with the policy objectives of preserving competition and diversity—the statutory basis for all television station ownership rules. In contrast, Hearst-Argyle's proposal places reasonable limits on local ownership—as tested by years of analogous antitrust case law—but provides the requisite flexibility to enable television stations to compete and thrive in today's multichannel marketplace.

Hearst-Argyle respectfully urges the Commission to consider its proposal so that meaningful regulatory relief can be provided in markets of all sizes.

Sincerely,



David J. Barrett

cc: Marsha MacBride
Susan Eid
Stacy Robinson
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